

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Washington, D.C.

In the Matter of:

MIGUEL VEGA,

Respondent.

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Docket No. 09-3599-DB

DEBARRING OFFICIAL'S DETERMINATION

INTRODUCTION

By Notice of Proposed Debarment dated June 30, 2009 ("Notice"), the Department of Housing and Urban Development ("HUD") notified Respondent MIGUEL VEGA that HUD was proposing his debarment from future participation in procurement and nonprocurement transactions as a participant or principal with HUD and throughout the Executive Branch of the Federal Government for an indefinite period from the date of the final determination of this action. The Notice further advised Respondent that his proposed debarment was in accordance with the procedures set forth in 2 CFR parts 180 and 2424. In addition, the Notice informed Respondent that his proposed debarment was based upon his failure to pay civil money penalties to HUD pursuant to a Settlement Agreement that resolved two administrative complaints HUD brought against him under the Program Fraud Civil Remedies Act of 1986 (PFCRA).

A telephonic hearing on Respondent's proposed debarment was held in Washington, D.C. on November 4, 2009,¹ before the Debarring Official's Designee, Mortimer F. Coward. Respondent and his adviser, Rose Strick, were present by phone. Patrisha Tijerina, Esq. and Geoff Patton, Esq. appeared on behalf of HUD.

Summary

I have decided, pursuant to 2 CFR part 180, to debar Respondent from future participation in procurement and nonprocurement transactions, as a participant, principal, or contractor with HUD and throughout the Executive Branch of the Federal Government for an indefinite period from the date of this Determination. My decision is based on the administrative record in this matter, which includes the following information:

Respondent failed to appear when this matter was originally called on October 14, 2009. The record closed on December 7, 2009, pursuant to an Order issued by the Debarring Official's Designee dated December 2, 2009.

1. The Notice of Proposed Debarment dated June 30, 2009.
2. A letter from Respondent dated July 28, 2009, to the Debarring Official requesting a hearing and describing his financial situation.
3. The Government's Pre-Hearing Brief in Support of Indefinite Debarment filed September 16, 2009 (including all exhibits and attachments thereto).

Government Counsel's Arguments

Government counsel states that HUD filed two separate complaints in 2007 and 2008 under PFRCA. HUD alleged in the complaints that Respondent, who worked for a FHA-approved lender, First Source Financial USA, furnished or caused to be furnished false and fraudulent documents in connection with loans that Respondent originated on behalf of First Source. The two complaints were resolved by Respondent's entering into a settlement agreement in which he agreed to pay a civil money penalty of \$200,000.00. Terms of payment under the settlement agreement required Respondent to make an initial payment of \$15,000.00, and thereafter 72 payments of \$3,065.98 per month. Respondent to date has paid only \$24,197.94, with his last payment made on September 16, 2008.

Counsel argues that Respondent's not paying his debt in violation of the settlement agreement is cause for his debarment under 2 CFR 180.800(c)(3), which provides for imposition of a debarment for "failure to pay a single substantial debt." Counsel also argues that Respondent's "blatant failure to comply with the terms of the Settlement Agreement as well as his failure to attempt to resolve such matters" provides further cause for his debarment under 2 CFR 180.800(d) because his dereliction is "of so serious or compelling a nature" that it affects his present responsibility.

Counsel dismisses Respondent's plea that his inability to make the agreed-upon payments resulted from financial difficulties that he is experiencing. In rejecting Respondent's plea, counsel asserts that Respondent's "financial troubles, however, neither excuse [his] failure to pay the civil penalties nor eliminate or waive the cause for his debarment." Counsel argues that if Respondent was aware of imminent financial difficulties when he signed the settlement agreement, thus knowing he would be unable to satisfy the terms of the settlement agreement, then he "acted with the exact lack of responsibility that the Government seeks to be protected from." Respondent's breach of the settlement agreement, counsel continues, "demonstrates that he lacks the requisite responsibility to participate in programs funded by the Federal Government, that he poses a continued risk to the Government through such failure, and that he is not a person with whom the Federal Government . . . should conduct business."

Government counsel states that First Source, based on its FHA approval to submit loans for mortgage insurance, was a participant in a covered transaction pursuant to 2 CFR 180.970(a), thus subject to HUD's debarment regulations. Respondent's position as a loan officer originating loans for First Source also made him a principal in a covered transaction and equally subject to the debarment regulations. See 2 CFR 180.120(a) and 180.995.

In arguing for Respondent's indefinite debarment, counsel observes that, based on Respondent's misconduct, it is not possible to determine when Respondent may become responsible and no longer pose a risk to the federal Government. Counsel further supports

her argument for Respondent's indefinite debarment by citing certain aggravating factors cognizable under 2 CFR 180.860 that counsel contends are present in this case. In that regard, counsel points to the duration of Respondent's wrongdoing, i.e., Respondent's failure to make more than 12 monthly payments that are now past due; Respondent's apparent failure to recognize the seriousness of his misconduct by suggesting that he has no control over his present inability to make the scheduled payments under the settlement agreement; Respondent's agreement and then failure to pay the civil penalties; and Respondent's failure to apprise HUD that he was having difficulty meeting his obligations. Counsel concludes that Respondent's conduct here shows that he lacks present responsibility and, based on his wrongdoing, an indefinite period of debarment is warranted.

Respondent's Arguments

Respondent, through his representative, pleaded that he signed a document, that is, the settlement agreement, he did not understand, nor did he understand the magnitude of the claim against him. Respondent claims that he overextended himself in committing to make the payments agreed to in the settlement agreement. Respondent would like to renegotiate payment terms that are more reflective of his present earnings. According to Respondent's representative, Respondent did not, at the time he entered into the settlement agreement, earn an income that would have allowed him to make the agreed payments. Respondent's representative suggested that Respondent fully disclosed his financial situation to his attorney who negotiated the settlement agreement, but did not receive proper representation – thus, Respondent's ill advised agreement to the settlement terms.

In his request for a hearing, Respondent wrote that his total income for 2008 was \$5,000.00, he was delinquent in his mortgage payments, owed over \$200,000.00, and was considering filing for bankruptcy protection. Respondent attributed his financial woes to the problems in the real estate market. Respondent stated that he is seeking a way to resolve the issue of his failure to make the payments agreed to in the settlement agreement. Respondent's representative noted that several calls were made to the Albany debt collection office seeking a restructuring of Respondent's debt; however, Albany did not respond.

Findings of Fact

1. Respondent at all relevant times was an employee of First Source Financial USA, an FHA-approved lender.
2. Respondent originated loans on behalf of First Source, which were covered by FHA mortgage insurance.
3. HUD filed two administrative complaints in 2007 and 2008 against Respondent based upon PFCRA, which alleged that Respondent furnished fraudulent documents in connection with loans that Respondent originated for First Source.
4. Respondent entered into a settlement agreement with HUD in which he agreed to pay a civil money penalty of \$200,000.00 to resolve the complaints.

5. The payment terms under the settlement agreement required Respondent to make an initial payment of \$15,000.00 and 72 monthly payments of \$3,065.98.
6. Respondent is now over 15 payments in arrears, having made his last payment in September 2008.

Conclusions

Based on the above Findings of Fact, I have made the following conclusions:

1. Respondent was a participant in a covered transaction by virtue of his originating FHA-insured loans for a FHA-approved lender. See 2 CFR 180.200 and 180.970(a).
2. Respondent, based on his employment activities, is subject to HUD's debarment regulations at 2 CFR part 180.
3. Respondent is in violation of the settlement agreement by his failure to make the required monthly payments specified in the agreement.
4. Respondent's failure to make the monthly payments under the settlement agreement is cause for his debarment under 2 CFR 180.800(c)(3), which provides for the imposition of debarment for "failure to pay a single substantial debt."
5. Respondent did not provide any credible evidence to support his claim of a severely reduced income preventing him from complying with the payment terms of the settlement agreement.
6. Respondent provided no corroboration of his claim that he attempted to no avail to contact the Albany office to modify the settlement agreement payment terms.
7. The Debarring Official takes administrative notice of the contraction of the real estate market in Las Vegas and in the country in general, which would have affected Respondent's earning ability. That, however, standing alone, does not excuse Respondent's failure to comply with the settlement agreement payment terms.
8. Respondent's claim that he was unaware of the gravity of the commitment he was making when he signed the settlement agreement, notwithstanding that he was represented by a lawyer at the time, is not sufficiently credible to mitigate his failure to comply with the terms of the settlement agreement.
9. Respondent's explanation of his current financial difficulties as the reason for his non-compliance with the payment terms of the settlement agreement, taken as a whole, are considered here in mitigation of his conduct.
10. The factors cited by the Government, based on 2 CFR 180.860, including the duration of Respondent's wrongdoing (no payment in 15 months), Respondent's apparent failure to accept responsibility for his predicament, and the partial payment of the penalty, *inter alia*, are sufficiently aggravating in influencing the period of debarment to be imposed.

11. Respondent's conduct raises serious concerns about his lack of present responsibility. See 2 CFR 180.125(b) and 180.855(b).
12. The Government has met its burden to prove that a cause for Respondent's debarment exists. See 2 CFR 180.850(a) and 180.855(a).
13. As provided in 2 CFR 180.865(a), a debarment generally should not exceed three years unless "circumstances warrant . . . a longer period of debarment." In light of Respondent's failure to meet his obligations under the settlement agreement, and his continuing failure to do so, "a longer period of debarment" clearly is warranted in this case. See, e.g., *In the Matter of William A. Thomas* 96-0058-DB (December 28, 1998), where an indefinite period of debarment was imposed for failure to pay a civil judgment. The respondent's failure was viewed as a demonstration of his lack of present responsibility, thus warranting the indefinite debarment.
14. HUD has a responsibility to protect the public interest and take appropriate measures against participants whose actions may affect the integrity of its programs.
15. HUD cannot effectively discharge its responsibility and duty to the public if participants in its programs or programs that it funds fail to act with honesty and integrity.

DETERMINATION

Based on the foregoing, including the Findings of Fact, Conclusions, and the administrative record, I have determined, in accordance with 24 CFR 24.870(b)(2)(i) through (b)(2)(iv), to debar Respondent for an indefinite period from the date of this Determination. Respondent's "debarment is effective for covered transactions and contracts that are subject to the Federal Acquisition Regulation (48 CFR chapter 1), throughout the executive branch of the Federal Government unless an agency head or an authorized designee grants an exception."

Dated: _____

1/21/2010

Henry S. Czauski

Henry S. Czauski
Debarring Official

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of January 2010, a true copy of the
DEBARRING OFFICIAL'S DETERMINATION was served in the manner indicated.

C. Stevenson

Corlis Stevenson
Debarment Docket Clerk
Departmental Enforcement Center
(Operations Division)

HAND-CARRIED

Mortimer F. Coward, Esq.
Debarring Official's Designee

Geoff Patton, Esq.
Patrisha Tijerina, Esq.
Government Counsel

FIRST CLASS MAIL

Miguel A. Vega
